



2013 Annual Report

Office of the Missouri Attorney General - Chris Koster





Introduction

I am honored to serve as your Attorney General and to work every day on behalf of Missourians. The Attorney General's Office has had a very successful year representing your interests in 2013. To give you a better understanding of all that our office does to protect Missouri citizens, this Annual Report highlights notable accomplishments from each division of the Attorney General's Office. Here are a few examples:

- Following an investigation of Walgreen stores across Missouri, we filed a lawsuit against Walgreens for false, misleading, and deceptive advertising.
- We had two of the first successfully prosecuted Jamaican lottery scam cases, including a 10-year prison sentence for a Florida man who defrauded an elderly Southeast Missouri couple out of \$250,000.
- We filed a lawsuit against Republic Services, owner of the Bridgeton Landfill, to force the company to take measures to extinguish a fire smoldering in the landfill that was creating health and environmental problems affecting the residential areas around the site. Republic signed an agreement with the office, and remediation work continues.
- We protected the safety and wellbeing of Missourians by prosecuting more than 60 homicide cases, including the double-murders of an elderly couple in Southwest Missouri. The office also prosecuted many criminal cases involving child molestation, sexual abuse, rape, kidnapping, arson, domestic assault, burglary, and financial exploitation of the elderly.
- We identified and prosecuted Medicaid fraud cases, obtaining more than \$47 million in judgments and recoveries for the state that had been stolen by Medicaid fraud, as well as obtaining five state criminal convictions for Medicaid fraud.
- We cracked down on charity scammers, including filing criminal charges against a St. Louis-area man who we alleged was falsely collecting money for wounded veterans.
- We protected Missouri's land, air and waterways in more than 670 legal matters, and had favorable decisions for the state in more than 95 percent of cases undertaken.
- In an effort to promote and enforce open government laws, we responded to nearly 100 inquiries and complaints each month in 2013 regarding Missouri's Sunshine Law.

Thank you for allowing me the privilege of serving as your Attorney General. I invite you to contact my office if there is any way we can assist you.

Respectfully,

CHRIS KOSTER
Attorney General



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Agriculture and Environment Division

The Agriculture and Environment Division aggressively protects Missouri's natural resources. Attorneys take legal action to stop pollution of the state's air, water and soil through injunctions, fines, penalties and in the most serious cases, incarceration.

The division also works to protect and enhance agriculture and the quality of life for rural Missourians by enforcing the law and advocating responsible public policy.

Division attorneys represent the Department of Natural Resources (DNR) and its constituent boards and commissions that regulate the use of the state's air, land and waters. At any given time, the division has about 450 active cases, including enforcement referrals and administrative appeals before the DNR's commissions. Enforcement litigation is filed primarily in state courts to seek preliminary and permanent injunctions to ensure compliance with Missouri's environmental laws.

SUCCESS STORIES AND NOTABLE CASES

In 2013, the division, in cooperation with the Financial Services Division, collected more than \$3 million in penalties, damages and costs from polluters.

BRIDGETON LANDFILL

In March, the Attorney General filed suit against Republic Services, Inc., as a result of the fire at the Bridgeton Sanitary Landfill in St. Louis County. The fire was creating health and environmental problems affecting the residential areas around the site. In April, Attorney General Koster reached agreement on an order that required Republic to pay for temporary accommodations for residents most affected by the odor and to reimburse state agencies for continuous monitoring and sampling of the

air and ground at the site. The order also required Republic to comply with a schedule for remedying the problems at the site. The case is continuing and the parties continue to discuss the final remedy and final penalty.

MAGMONT MINE AND MILL

Division Director, Assistant Director and Department General Counsel will review all repetitive and egregious violations to determine if there is evidence of willful violations for possible referral to the PA.

ASARCO BANKRUPTCY

The Attorney General successfully defended a challenge that attempted to block a \$5.8 million bankruptcy court distribution that will be used to clean up contamination in Missouri. Missouri had entered a bankruptcy settlement with ASARCO in which the state was to receive \$250,000 for its costs and \$5.65 million was to be placed in a trust for the cleanup of slag piles at the Glover lead mine and mill site. Another creditor attempted to block that distribution and claim the funds. That argument was defeated; the trust has now been established and work is set to begin at the site.

PROGRAMS

DNR referred 104 violators to the Attorney General's Office. The division has filed or appeared in 101 cases and resolved others without the need for a filed case. The division obtained a total of 58 judgments related to DNR referrals.

The Attorney General, in conjunction with the Department of Agriculture, continued Prosecution Bark Alert, an effort to eliminate illegal and substandard dog-breeding operations. The Attorney General's Office has assisted the department in the rescue of over 6,500 animals since the Department



and the Attorney General began this joint effort in 2009. The Canine Cruelty Prevention Unit provides immediate support for the Department of Agriculture's rescue efforts and addresses the consumer protection violations that often result from the sale of dogs from substandard operations. Concerned citizens can report incidents of animal abuse by following the link on the Attorney General's website.

The division increased its enforcement of the Missouri Underground Facility Safety and Damage Prevention Act (Missouri "One Call"). The division investigated 89 complaints, resulting in 37 settlements and four filed cases, with over \$10,000 in penalties assessed. The division also continued its public education efforts, appearing at training events for excavators and utilities.

VERIFIABLE COLLECTION AMOUNTS

The following are the 2013 collection figures as of January 31, 2014, for the Agriculture and Environment Division:

In 2013, the office's representation of the Department of Natural Resources resulted in collections of \$2,968,460.25 for DNR, \$2.5 million of which came from a state/federal enforcement judgment entered in 2013. In addition, the division collected \$22,368.23 for the Department of Agriculture and \$10,250,000 from Missouri One Call violations.

While these dollar figures convey the magnitude of our contribution to the state's financial resources, the value of the environmental clean-ups and pollution control equipment obtained is impossible to put in monetary terms.





Consumer Protection Division

The Attorney General's Consumer Protection Division has moved Missouri toward a more open and honest marketplace since the adoption of Missouri's Merchandising Practices Act 45 years ago. The division seeks to ensure that everyone - businesses and consumers alike - has the opportunity to operate in a marketplace that is free of fraud, deception, misrepresentations, false promises, unfair practices and unfair competition. The division also serves a vital role in enforcing Missouri's antitrust, securities, telemarketing, nonprofit, charitable trust and foundation laws.

In addition to having the authority to initiate both civil and criminal prosecutions against wrongdoers, the Attorney General is responsible for investigating unfair and deceptive business practices.

In 2013, the Consumer Protection Division responded to 145,388 consumer complaints and inquiries - a 17% increase from 2012. Division staff recovered more than \$13 million in restitution for Missouri consumers through investigations and informal mediation with businesses. Through actual litigation on behalf of Missouri citizens, the division filed 60 civil and criminal cases and obtained 65 formal settlement agreements, injunctions, or other judgments preventing deception, unfair practices, investment fraud, anti-competitive conduct, and violations of the telemarketing (No Call) laws. These formal actions resulted in monetary judgments for penalties and consumer law enforcement of an additional \$12.6 million, \$5.4 million of which was allocated to restitution for Missouri consumers. Additionally, throughout 2013, members of the Consumer Protection Division appeared at 187 public and educational events in an effort to prevent fraud through education.

The division annually lists the top-10 customer scam list, based on consumer complaints.

2013 TOP CONSUMER SCAM LIST

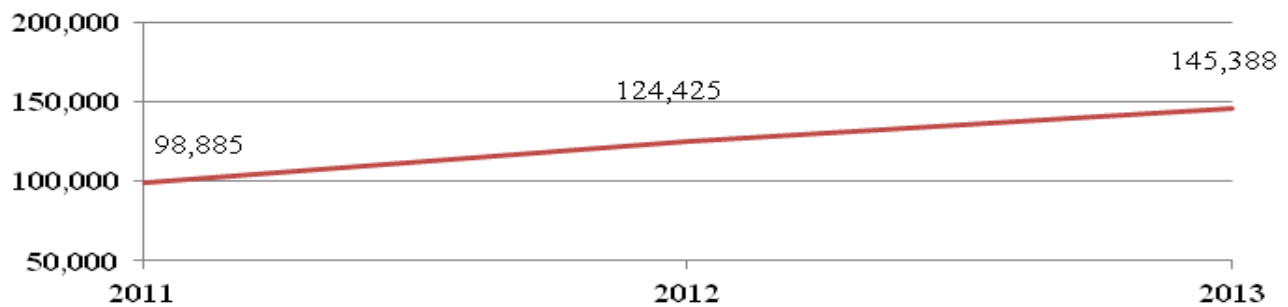
- 1. No-Call and Illegal Telemarketing (57,414 complaints)** - The Missouri Attorney General received 57,414 complaints from consumers regarding no-call violations and illegal telemarketing calls, a nearly 44% increase from 2012. On average, consumers filed approximately 229 complaints each working day. The Attorney General reminds Missourians that they may register their residential landline or cellular telephone numbers on the Missouri No Call List by calling toll free 866-662-2551 or by visiting his website at www.ago.mo.gov. Consumers who receive harassing telephone solicitations are encouraged to file a complaint at 866-buzzoff (866-289-9633).
- 2. Debt Collectors (1,572 complaints)** - Many consumers who file complaints indicate they are being harassed by debt collectors for debts they may not even owe. Most consumers claim the debt collection agencies are abusive, threatening and repeatedly call when attempting to collect debt. In addition to actions taken by the Attorney General's Office, the FTC also enforces the Fair Debt Collection Practices Act. For additional information consumers can contact the FTC at www.consumer.ftc.gov.



3. **Financial Fraud (1,275 complaints)** - Consumer complaints concerning wire transfers, sweepstake scams, payment scams, and other types of financial scams often target the elderly. The Missouri Attorney General's office aggressively pursues complaints, and had two of the first successfully prosecuted Jamaican lottery scam cases in the nation in 2013.
4. **Mail and Phone Solicitation Scams (1,257 complaints)** - Consumers continue to be inundated with unwanted telephone calls, emails, or letters. Scam artists often use the promise of a valuable prize or award to entice consumers to send money, buy overpriced products or services, or contribute to bogus charities. Sweepstakes or foreign lottery promotions are the largest type of scams that affect consumers nationwide. We warn consumers never to give out personal information and not to pay money to individuals they do not know. Many of these scammers are out of the country, which makes recovering restitution for consumers very difficult.
5. **Telephone Cramming and Billing (979 complaints)** - Cramming happens when consumers receive a charge to their phone bill for services they did not order. The problem often goes unnoticed or improper charges can be as small as \$1 or \$2, and consumers may not pay attention to such small amounts on their bills. We advise consumers who notice unwarranted charges to contact their carrier and request the charge be removed as well as to receive a refund.
6. **Mortgage/Foreclosure/Loan Modifications (850 complaints)** - The Missouri Attorney General's office continues to receive a significant number of complaints from struggling homeowners concerning foreclosure on their homes and the loan-modification process. Our office works closely with banks and consumers in the foreclosure process to ensure homeowners are treated fairly.
7. **Home Repair and Remodeling (812 complaints)** - Complaints against home improvements/home repair contractors are among our most common consumer complaints. The typical scammer will go door-to-door, asking for money up front from consumers. Most door-to-door schemes involve asphalt driveway scams, roof and chimney repairs, and remodeling work inside the home, often following storms. These types of complaints typically involve scam artists that are not licensed, are not from the area, do not provide a detailed contract, are in business a short period of time, and usually demand upfront cash payments. The Attorney General continues to be aggressive in pursuing these types of cases.
8. **Credit and Debit Card (736 complaints)** - The number of complaints continues to increase from individuals who have had money taken through unauthorized debits from their checking account or by accessing their credit card information. Scams such as these can occur by telephone, email, or text message. The Attorney General recommends that consumers never authorize direct bank account debiting or reveal their bank account number over the phone. Using a credit card does provide some protection under federal law, which grants consumers the right to challenge unauthorized charges. This challenge for charge-backs must generally be done in writing within 60 days of the charge appearing on the consumer's monthly statement. Even so, consumers are encouraged to provide credit card information to only familiar merchants contacted by the consumer.
9. **Cable/Satellite Services (668 complaints)** - Consumer complaints range from installations and price discrepancies to ever-changing channel offerings.
10. **Timeshare/Resale (668 complaints)** - Consumers are often vulnerable during difficult financial times and can be desperate to sell their timeshares. Scam artists persuade owners to pay high up-front broker fees by indicating they have a potential buyer, when in fact they do not. Timeshare complaints range from misrepresentation surrounding the sales pitch, maintenance fees, and deeds to properties not provided as promised.



Consumer Complaints Received



OTHER HIGHLIGHTS FROM 2013

Cracking Down on Charity Scams

The Attorney General, in his role as a beneficiary of all charitable trusts and in oversight of Missouri's not-for-profits, cracked down on charity scams in 2013. Some of the actions taken include the recovery of approximately \$38,000 that Kendallwood Hospice was withholding from Honor Flight – a charity that flies veterans to Washington DC to visit their war's memorial, and filing suit against an individual for failure to use Joplin tornado charitable funds for victims. The Attorney General also filed suit against several scam artists who impersonated charities to take money for their own benefit. One such lawsuit was brought against Ryan Zull, who solicited funds in the names of deceased marines – even making up a fake name for one – to create a memorial garden, which turned out to be a plaque in his front yard. In another case Matthew Buckingham was alleged to have sold raffle tickets to benefit “veterans of all foreign wars,” yet he never held the raffle or distributed any proceeds to charity. And in a third case, William Harshbarger allegedly collected money outside of grocery stores and from individuals in the community for the Wounded Warrior Project, but did not send the money to the charity.

Efforts to stop “cramming” on telephone bills

In 2013, the Attorney General's Office continued its efforts to stop illegal “cramming” the practice of

billing consumers for services through their telephone bills, often without their knowledge or consent. The office obtained judgments against five content providers that crammed consumers phone bills, resulting in over \$500,000 in restitution. Due to the office's legal actions, ID Lifeguards, V&T Communication Services, d/b/a Odyssey Communication; Coast to Coast Voice, LLC; Familycontact911.com, LLC; and Green Certification, LLC, are permanently prohibited from charging consumers for products or services via their telephone bills. Missouri, working with other state Attorneys Generals, also helped secure a commitment by mobile carriers (including AT&T Mobile, Verizon Wireless, Sprint, and T-Mobile) to end the billing practice that had allowed the most common form of mobile cramming.

Enforcement of the Do Not Call List

The No Call law allows Missourians to reduce unwanted telemarketing calls made to their homes by signing up for the No Call list, which is managed by the Attorney General's Office. There is no cost to get on the list. In August, 2012, the No Call list was expanded to include cellular telephones. There are currently over 4.3 million Missouri phone numbers registered on the No Call list. In 2013, the Attorney General's office investigated 57,414 complaints related to No Call and telemarketing violations. As part of the Office's ongoing efforts to prevent No Call violations, the Office obtained over \$149,000 in judgments against telemarketers.



Complaints about unwanted calls have increased dramatically in the past few years.

While Missouri's No-Call list provides protection against unwanted calls from many in-state and national businesses, unfortunately, new technology is allowing callers from around the world to place literally millions of calls each day, anonymously, over the internet. These calls over the internet cost virtually nothing for the caller to place and cannot be traced back to the call's originator. Callers also utilize "spoofing," or fake caller ID information, to make it harder to trace where the calls are originating. Due to the existence of the No Call list, however, over 200 telemarketers currently refrain from calling phone numbers on the list. And many of the companies found to violate the list are prohibited from making further calls into Missouri.

Prosecuting Jamaican Lottery Scams

The Attorney General's Office had two of the first successfully prosecuted Jamaican lottery scam cases in the country in 2013. The Jamaican lottery scam involves communicating to consumers, often through letters that appear to be from government officials and legitimate businesses, that they have won a lottery, but need to pay "fees and taxes" before they get their winnings. In 2013, The Attorney General's Office convicted Patrick Wilson of stealing over \$250,000 from an elderly Missouri couple as part of a Jamaican lottery scam, and he was sentenced to 10 years in the Department of Corrections. In a similar, albeit smaller scheme, Lorenzo Chin was convicted and sentenced to probation after he returned the money he took from his victims.





Home Repair Schemes

Home repair schemes were a focus of the Attorney General's Office in 2013. These scams range from storm chasers that sell roof repairs door-to-door in the aftermath of storms, but do not return to do the work once they've received the insurance check, to failure to deliver fixtures and supplies, to incomplete work to asphalt scams. The office pursued numerous civil and criminal cases in response to home repair fraud in 2013. These include criminal convictions for two Mid-Missouri men, Joshua Whitlock and Kendale Williams, who took approximately \$16,000 from consumers but did not do the work. Brian Ecker was found to be in criminal contempt when he violated a previous order not to engage in home repair. Gloria Diane Schoeller pleaded guilty to taking insurance money to repair homes following the Joplin tornado but not fulfilling her promises to the displaced home owners. Terry Phelps was sentenced to 10 years in the Department of Corrections for his role in an asphalt scheme that is prevalent in rural areas of Missouri: an asphalt truck will troll through areas with gravel driveways while scammers go door-to-door with promises of asphalt drives for little money, claiming the asphalt is left over from a nearby road repair. In truth, the asphalt is low quality and inadequately installed, leaving the homeowner out thousands of dollars without a proper asphalt driveway.

Walgreens

Following an investigation into Walgreens stores across Missouri, the Attorney General filed suit against the company, alleging that the prices listed on sales tags often failed to match the prices charged at the register. Many of these discrepancies come from the failure to remove expired tags and the overwhelming number of sales and sales- looking tags, which are often confusing or deceptive.

Standard and Poor's

The Missouri Attorney General's Office and the Missouri Secretary of State filed suit against Standard and Poor's for conduct at the heart of the Great

Recession. The suit alleges that Standard and Poor's made misrepresentations concerning its ratings of Mortgage-Backed Securities to serve its own business interests. The Great Recession was precipitated when it was revealed that many Mortgage-Backed Securities were significantly overvalued, most of them rated by Standard and Poor's. The Department of Justice and 19 other states have filed similar suits. This action is important in holding Wall Street accountable for the recent financial crisis.

Working with other States

The Attorney General, in conjunction with other states' Attorneys General was able to address large regional and national issues within the marketplace. Notable among these was an investigation that resulted in a \$30 million national settlement with Affinion Group, Inc. and its subsidiaries Trilegiant Corporation and Webloyalty.com, Inc. The companies deceptively sold enrollments in discounts clubs and membership programs. Once consumers became members, their enrollments continued until the consumer canceled. The "negative option" memberships were sold nationally in association with "marketing partners," for services that provided limited value for products, including credit monitoring, roadside assistance, and discounted travel. In addition, an individual settlement was reached with pharmaceutical company Pfizer, Inc., for deceptive marketing in Missouri of the prescription drugs Zyvox and Lyrica.



Criminal Division

The Attorney General represents the State in every felony case appealed to the Supreme Court of Missouri and the Missouri Court of Appeals. In 2013, the Criminal Division filed 769 briefs. The majority of these briefs were filed in felony cases (or post-conviction cases challenging felony convictions). A small number were sexually violent predator appeals and driver's license revocation cases.

Here are some of the notable cases the division handled that were resolved by the courts last year:

IN THE MISSOURI SUPREME COURT:

Capital Cases

State v. Vincent McFadden. The Court upheld the defendant's first-degree murder conviction and death sentence. The defendant shot to death the sister of his former girlfriend after warning her not to talk about his involvement in another murder.

Kevin Johnson, Jr. v. State. The Court upheld the denial of the defendant's post-conviction motion. The defendant was convicted of first-degree murder and sentenced to death for killing Kirkwood Police Sergeant William McEntee, who had earlier that day responded to a medical emergency involving the defendant's brother.

State v. Lance Shockley. The Court upheld the defendant's first-degree murder conviction and death sentence. The defendant assassinated Missouri Highway Patrol Sergeant Carl DeWayne Graham, Jr., who was investigating the defendant on potential charges of manslaughter in connection with a fatal motor vehicle accident.

Non-Capital Cases

State v. Kevin Hicks. The Court upheld the admission of the defendant's confession and held that it was not rendered involuntary by agreements the state failed to honor. The Court affirmed the defendant's convictions on one count of robbery in the first degree, one count of forcible rape, one count of attempted forcible rape, and five counts of forcible sodomy.

Sheena Eastburn v. State. The Court upheld the denial of the defendant's second post-conviction motion, in which the defendant, who was a juvenile at the time of the murder she committed, argued that her sentence was unconstitutional in light of the United States Supreme Court's decision in *Miller v. Alabama*.

State v. Gene Jeffrey. The Court upheld the defendant's convictions on two counts of sexual misconduct involving a child. The Court held that § 566.083 was not unconstitutional, and that the evidence was sufficient to support the defendant's convictions.

State v. Ledale Nathan. The Court upheld the finding of guilt on the juvenile defendant's conviction for murder in the first degree, and the Court upheld the defendant's twenty-three other convictions for burglary, assault, robbery, kidnapping, and armed criminal action.

State v. Laron Hart. The Court upheld the finding of guilt on the juvenile defendant's conviction for murder in the first degree, and the Court upheld the defendant's three other convictions for robbery in the first degree and armed criminal action.



State v. Joey Honeycutt. The Court held that the ban on retrospective laws contained in the Missouri Constitution does not apply to criminal statutes.

State v. Michael Wade. The Court held that § 566.150, RSMo, which prohibits certain sex offenders from being present in or loitering within 500 feet of public parks with playground equipment or swimming pools, is a criminal statute and is thus not subject to the Missouri Constitution's ban on retrospective laws.

Rodney McIntosh v. State. The Court upheld the denial of the defendant's post-conviction motion. The defendant had previously been found guilty of statutory sodomy in the first degree.

State v. Nicholas Hillman. The Court upheld the constitutionality of § 559.115, and the Court upheld the defendant's convictions of distributing a controlled substance to a minor and attempted statutory sodomy in the second degree.

State v. Stanley Carter. The Court rejected the defendant's claim that the prosecutor engaged in racial discrimination during jury selection, and the Court upheld the defendant's convictions for assault in the first degree and armed criminal action.

State v. Dennis Blankenship. The Court upheld the constitutionality of § 568.080 as applied in this case to the attempted use of a child in a sexual performance, and the Court upheld the defendant's conviction for that offense.





IN THE MISSOURI COURT OF APPEALS:

State v. Benjamin Morales. The Court found that the State's prosecution of the defendant on forgery charges was not preempted by federal immigration law. The defendant, an illegal immigrant, had been charged with submitting a job application containing a false Social Security number. The Court of Appeals overturned the trial court's order dismissing the charge on federal preemption grounds.

State v. Curtis Sills. The Court affirmed the defendant's conviction for trafficking crack cocaine in the second degree despite his claim that the weight of the drugs was not established to be sufficient beyond a reasonable doubt. By the time of trial, the drugs weighed less than the threshold required, but the State's proof that the loss was due to evaporation and transfer of the material during the weighing process was deemed sufficient to explain the difference, and the 95% certainty that the initial weight was correct sufficient to establish proof beyond a reasonable doubt.

State v. Bobby Joe Roberts. Defendant kidnapped a mentally ill young woman whom he met on a bondage and domination internet site, handcuffed her and drove her across the state, then repeatedly raped and sodomized her in a hotel room. The Court held that the victim's mother could offer lay opinion testimony as to her evaluation of the victim's "mental age," and affirmed the defendant's convictions.

Chester Harvey v. State. Defendant was convicted of first-degree murder, armed criminal action, two counts of kidnapping, and abandonment of a corpse. The defendant kidnapped a drifter, brought him to his house in Laddonia, Missouri, joined family and friends in torturing and eventually killing the victim, and then abandoned the victim's corpse along Highway 54. The Court rejected the defendant's post-conviction claim that his lawyer had a conflict of interest.

State v. Paul White. The Court upheld the defendant's convictions for murder in the first degree and robbery in the first degree. The defendant and a co-actor robbed and murdered an insurance agent. The Court rejected the defendant's claim that an error in first-degree murder instruction entitled him to a new trial.

State v. Melissa Thompson. The defendant was convicted of murder in the second degree after she inflicted fatal injuries on the four-month-old victim who was in her day care. The Court upheld the defendant's conviction and rejected her claim that the trial court had erred in failing to submit an instruction for a lesser homicide offense.



Financial Services Division

The *Financial Services Division's Recovery Unit* provides collection services to more than 40 state agencies and several divisions within the Attorney General's Office ("AGO"). Together, these agencies, commissions and AGO divisions refer to the unit more than 100 types of debts for collection. The Unit also handles some non-collection legal work, including Income Maintenance cases. The attorneys in the unit maintain heavy caseloads. The following summary describes some of the divisions most common case types:

The Estate Recovery program seeks to collect a debt from a deceased debtor's probate estate. If there is not an estate open in the probate court of the county of death, the AGO, as a creditor, has one year from the date of death to force open an estate. These cases typically are Medicaid debts, but can also include Income Maintenance sources of aid.

The Bankruptcy Recovery program seeks to collect a debt through a debtor's bankruptcy. The unit files proofs of claim in bankruptcy proceedings. In addition, the unit represents state agencies to protect a regulatory interest (i.e., an environmental concern, public safety, or licensing) that might be lost or impaired.

The Missouri Incarceration Reimbursement Act ("MIRA") recovery program seeks to collect funds from inmates in Missouri prisons to pay for their cost of incarceration.

The Third Party Liability recovery program seeks to collect a debt from the insurance proceeds to which the client's lien has attached. The State has lien and subrogation rights when a MO HealthNet recipient is entitled to recover from a third party such as another insurer (health insurance, liability, workers compensation, etc.) or a tortfeasor. Section 208.215, RSMo, allows the recipient to ask a court for relief from the lien, and the Recovery Unit defends the State when the recipient elects to do so. The circuit court has broad discretion to, and often does, significantly reduce or eliminate the lien.

The General Recovery program seeks to collect debts that do not fit into the other types of collections from a living debtor, who is not in bankruptcy, by setting up a payment plan or obtaining a judgment and garnishing the debtor's wages or bank accounts. This work is done for virtually every state agency, some state-wide offices, and funds, including: the Veteran's Commission; the State Lottery Commission; the Ethics Commission; the Departments of Agriculture, Corrections, Health and Senior Services, Labor and Industrial Relations, Mental Health, Public Safety, Natural Resources, Revenue, Social Services; the National Guard; the Secretary of State; and the Tort Victims Compensation Fund.

The Income Maintenance program is not a collection program but, instead, defends, in circuit court, decisions by the Department of Social Services to deny public assistance benefits to an applicant.

Non-Case Matters typically include providing general counsel legal advice on collection matters.



RECOVERY UNIT

| Referring Party Name | Money Received | % of Total Payments | No. of Cases w/ Payments | Avg. Amount Per Case | No. of Cases Opened |
|---|-----------------|---------------------|--------------------------|----------------------|---------------------|
| Medicaid Fraud | \$16,769,432.19 | 54.96% | 52 | \$322,489.08 | 53 |
| MO HealthNet Division | \$4,749,057.43 | 15.56% | 344 | \$13,805.40 | 423 |
| Dept. of Natural Resources (DNR) | \$2,968,460.25 | 9.73% | 115 | \$25,812.70 | 132 |
| Consumer and Not for Profit (AGO) | \$2,827,374.04 | 9.27% | 502 | \$5,632.22 | 438 |
| Fraud & Noncompliance Unit (DPS) | \$593,741.03 | 1.95% | 194 | \$3,060.52 | 140 |
| MO Incarceration Reimbursement Act | \$528,813.52 | 1.73% | 120 | \$4,406.78 | 62 |
| Tort Victims' Comp. Fund (TVCF) | \$492,977.39 | 1.62% | 5 | \$98,595.48 | 10 |
| No Call Unit (AGO) | \$377,425.00 | 1.24% | 309 | \$1,221.44 | 309 |
| Central Accident Reporting (CARO) | \$294,235.05 | 0.96% | 5 | \$58,847.01 | 7 |
| Dept. of Mental Health (DMH) | \$173,132.30 | 0.57% | 19 | \$9,112.23 | 7 |
| MO Health & Senior Services (DHSS) | \$135,338.14 | 0.44% | 64 | \$2,114.66 | 50 |
| Workers' Compensation Division | \$125,383.45 | 0.41% | 18 | \$6,965.75 | 16 |
| Family Support Div. - Recipient Overpay | \$110,358.66 | 0.36% | 178 | \$619.99 | 1222 |
| Lottery Commission | \$98,591.68 | 0.32% | 98 | \$1,006.04 | 80 |
| AGO Criminal Cases | \$42,141.86 | 0.14% | 6 | \$7,023.64 | 6 |
| AGO MO One Call | \$16,000.00 | 0.05% | 22 | \$727.27 | 28 |
| Ethics Commission | \$29,293.50 | 0.10% | 86 | \$340.62 | 79 |
| DSS | \$32,192.07 | 0.11% | 8 | \$4,024.01 | 7 |



| | | | | | |
|--|------------------------|----------------|-------------|---------------------|-------------|
| Auditor | \$21,962.42 | 0.07% | 4 | \$5,490.61 | 3 |
| Dept. of Agriculture | \$22,368.23 | 0.07% | 10 | \$2,236.82 | 3 |
| Health Spa Regulatory | \$16,150.00 | 0.05% | 138 | \$117.03 | 138 |
| Public Safety | \$13,598.45 | 0.04% | 3 | \$4,532.82 | 0 |
| Dept. of Economic Development (DED) | \$12,350.00 | 0.04% | 1 | \$12,350.00 | 5 |
| Children's Division | \$10,898.78 | 0.04% | 12 | \$908.23 | 11 |
| Secretary of State | \$10,148.60 | 0.03% | 11 | \$922.60 | 48 |
| Dept. of Revenue (DOR) | \$9,284.97 | 0.03% | 2 | \$4,642.49 | 1 |
| Veteran's Commission | \$7,424.08 | 0.02% | 6 | \$1,237.35 | 13 |
| National Guard | \$6,050.79 | 0.02% | 10 | \$605.08 | 1 |
| Highway Patrol | \$5,200.00 | 0.02% | 2 | \$2,600.00 | 0 |
| Professional Registration | \$3,680.00 | 0.01% | 51 | \$72.16 | 51 |
| Dept. of Corrections (DOC) | \$1,918.76 | 0.01% | 1 | \$1,918.76 | 0 |
| Office of Administration | \$1,585.26 | 0.01% | 2 | \$792.63 | 6 |
| Court Costs Fund (AGO) | \$1,008.22 | 0.00% | 8 | \$126.03 | 3 |
| State Fair Commission | \$816,500 | 0.00% | 7 | \$116.64 | 5 |
| Div. Labor Stds & Ind. Relations (DOLIR) | \$600,000 | 0.00% | 1 | \$600.00 | 3 |
| Human Rights | \$300,000 | 0.00% | 1 | \$300.00 | 0 |
| GRAND TOTAL | \$30,512,972.62 | 100.00% | 2415 | \$605,374.07 | 3280 |



BANKRUPTCY CASES

| Referring Party Name | Money Received | % of Total Payments | No. of Cases w/ Payments | Avg. Amount Per Case | No. of Cases Opened |
|------------------------------------|--------------------|---------------------|--------------------------|----------------------|---------------------|
| Family Support Division | \$64,242.13 | 74% | 9 | \$7,138.01 | 47 |
| Dept of Natural Resources (DNR) | \$10,516.33 | 12% | 4 | \$2,629.08 | 6 |
| Lottery Commission | \$6,310.82 | 7% | 2 | \$3,155.41 | 4 |
| MO Health & Senior Services | \$3,004.83 | 3% | 1 | \$3,004.83 | 3 |
| Consumer | \$2,464.00 | 3% | 1 | \$2,464.00 | 1 |
| Dept. of Social Services | \$975.12 | 1% | 2 | \$487.56 | 1 |
| AGO Legal Expenses | \$0.00 | 0% | 0 | \$0.00 | 1 |
| Dept of Economic Development (DED) | \$0.00 | 0% | 0 | \$0.00 | 3 |
| MIRA | \$0.00 | 06% | 0 | \$0.00 | 3 |
| MO HealthNet Division | \$0.00 | 0% | 0 | \$0.00 | 1 |
| Ethics Commission | \$0.00 | 0% | 0 | \$0.00 | 3 |
| Dept of Mental Health | \$0.00 | 0% | 0 | \$0.00 | 1 |
| Fraud & Noncompliance Unit (DPS) | \$0.00 | 0% | 0 | \$0.00 | 1 |
| Secretary of State | \$0.00 | 0% | 0 | \$0.00 | 1 |
| National Guard | \$0.00 | 0% | 0 | \$0.00 | 1 |
| GRAND TOTAL | \$87,513.23 | 100% | 19 | \$18,878.89 | 77 |



Governmental Affairs Division

The mission of the Governmental Affairs Division is to protect the safety and well-being of Missourians by ensuring professionals adhere to state laws; helping the most vulnerable get good care; enforcing state ethics and campaign finance laws; ensuring appropriate Medicaid reimbursement; and providing representation, advice and legal support to state agencies and officials.

The Governmental Affairs Division protects citizens' safety and well-being by:

- Ensuring that professionals adhere to state laws and disciplinary rules.
- Enforcing state ethics and campaign finance laws.
- Enforcing the Missouri Human Rights Act relating to discrimination in places of public accommodation, housing, and employment.
- Enforcing state open meetings and records laws.
- Removing caregivers who abuse or neglect vulnerable citizens.
- Prosecuting violations of nursing home standards.
- Helping mentally ill or physically challenged Missourians obtain guardians to help get care.
- Ensuring appropriate Medicaid reimbursement.
- Enforcing the provisions of the tobacco Master Settlement Agreement and state law requiring certain tobacco manufacturers to establish escrow accounts.
- Representing the Missouri Lottery Commission.





PROFESSIONAL LICENSING UNIT

The division's Professional Licensing Unit serves and protects the safety and well-being of Missouri citizens by ensuring that professionals who are required to be licensed by the state (such as pharmacists, nurses, appraisers, engineers and veterinarians) adhere to state laws and disciplinary rules. In 2013, more than 300 professional licensees were prosecuted for violations involving misconduct, negligence, or incompetence in the practice of their professions. Disciplines ranged from reprimands to revocations of licenses.

Number of Cases Closed in 2013 per Professional Licensing Board

| | |
|---|------------|
| Peace Officer Standards and Training | 91 |
| Real Estate Commission | 78 |
| Real Estate Appraisers Commission | 27 |
| Committee of Psychologists | 18 |
| Board of Architects, Prof. Engineers, Prof. Land Surveyors and Landscape Architects | 17 |
| Office of Tattooing, Body Piercing & Branding | 14 |
| Alcohol and Tobacco Control | 11 |
| Board of Nursing Home Administrators | 9 |
| Committee of Professional Counselors | 8 |
| Committee for Social Workers | 8 |
| Board of Examiners for Hearing Instrument Specialists | 5 |
| Board of Respiratory Care | 5 |
| Veterinary Medical Board | 5 |
| Board of Pharmacy | 4 |
| Board of Private Investigators | 3 |
| Gaming Commission | 3 |
| Board of Embalmers and Funeral Directors | 2 |
| Lottery Commission | 2 |
| Committee on Marital and Family Therapists | 2 |
| Board of Nursing | 2 |
| Board of Podiatric Medicine | 2 |
| Board of Occupational Therapy | 1 |
| Office of Athletics | 1 |
| Dental Board | 1 |
| Office of Endowed Care Cemeteries | 1 |
| Board of Therapeutic Massage | 1 |
| TOTAL | 321 |



GOVERNMENTAL ENTITIES UNIT

Attorneys in the division's Governmental Entities Unit represent the Department of Social Services in efforts to recoup Medicaid funds and the Department of Health and Senior Services in enforcing civil monetary penalties against nursing home facilities. They provide general counsel to the Missouri Lottery Commission and handle important litigation for various state agencies in all levels of federal and state courts and in state administrative hearings. They also represent the Missouri Commission on Human Rights in enforcing laws related to discrimination in places of public accommodation, housing and employment.

MISSOURI COMMISSION ON HUMAN RIGHTS

In 2013, the division continued its enforcement of the provisions of the Missouri Human Rights Act, including obtaining judgments totaling over \$500,000 in discrimination cases. In one case, the division obtained a decision finding that a restaurant wrongfully denied entry to a visually impaired patron accompanied by a service animal. The violator was ordered to pay \$32,000 in damages for emotional distress and humiliation and \$5,000 for deprivation of civil rights. Another case involved an individual with a spinal cord injury who was confined to a wheelchair. Her landlord denied her request to build an entry ramp to her apartment building. In addition to awarding the tenant actual damages for emotional distress and humiliation, and deprivation of civil rights, the hearing examiner ordered a civil penalty against the landlord.

DEPARTMENT OF SOCIAL SERVICES - MO HEALTHNET DIVISION

In 2013, the Governmental Affairs Division represented the Missouri Department of Social Services, MO HealthNet Division, in its efforts to recoup improperly paid Medicaid funds. The MO HealthNet Division referred 98 recoupment cases to the Governmental Affairs Division. Through litigation, the Governmental Affairs Division obtained authorization for the MO HealthNet Division to recoup more than \$3.6 million in Medicaid funds, including \$1.5 million in one case alone.

DEPARTMENT OF HEALTH AND SENIOR SERVICES

The Division represents the Department of Health and Senior Services and enforces civil monetary penalties against nursing home facilities for alleged violations of the law protecting the health, safety, and welfare of the vulnerable residents of these facilities. These allegations include such actions as the failure to properly use a lift, causing a patient to fall, and the failure to promptly correct a flaw in the fire alarm system. Some cases involve harm to residents, others involve potential harm. In 2013, the Attorney General's Office reached Settlement Agreements imposing civil monetary penalties with 32 nursing home facilities in the state of Missouri for alleged violations.

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

The Governmental Affairs Division in 2013 received 30 teacher-discipline referrals from the Department of Elementary and Secondary Education and finalized 25 cases. As a result, teacher certifications were surrendered, suspended and, in 9 cases, revoked. Certifications were disciplined in cases where the division proved teachers had committed crimes or engaged in unethical behavior crimes including sexual contact with students. The division also worked with local prosecutors to effectuate surrender or revocations of certifications held by four teachers who were facing criminal charges.



OPEN GOVERNMENT

In 2013, in an effort to promote and enforce open government laws, the division responded to nearly 100 inquiries per month regarding the Sunshine Law. Questions came from county and municipal employees, elected officials, and private citizens. Issues ranged from releasing public records to posting of meeting notices to proper reasons to close meetings. The division also sent out hundreds of copies of a helpful booklet published by the Attorney General's office entitled "Missouri Sunshine Law."

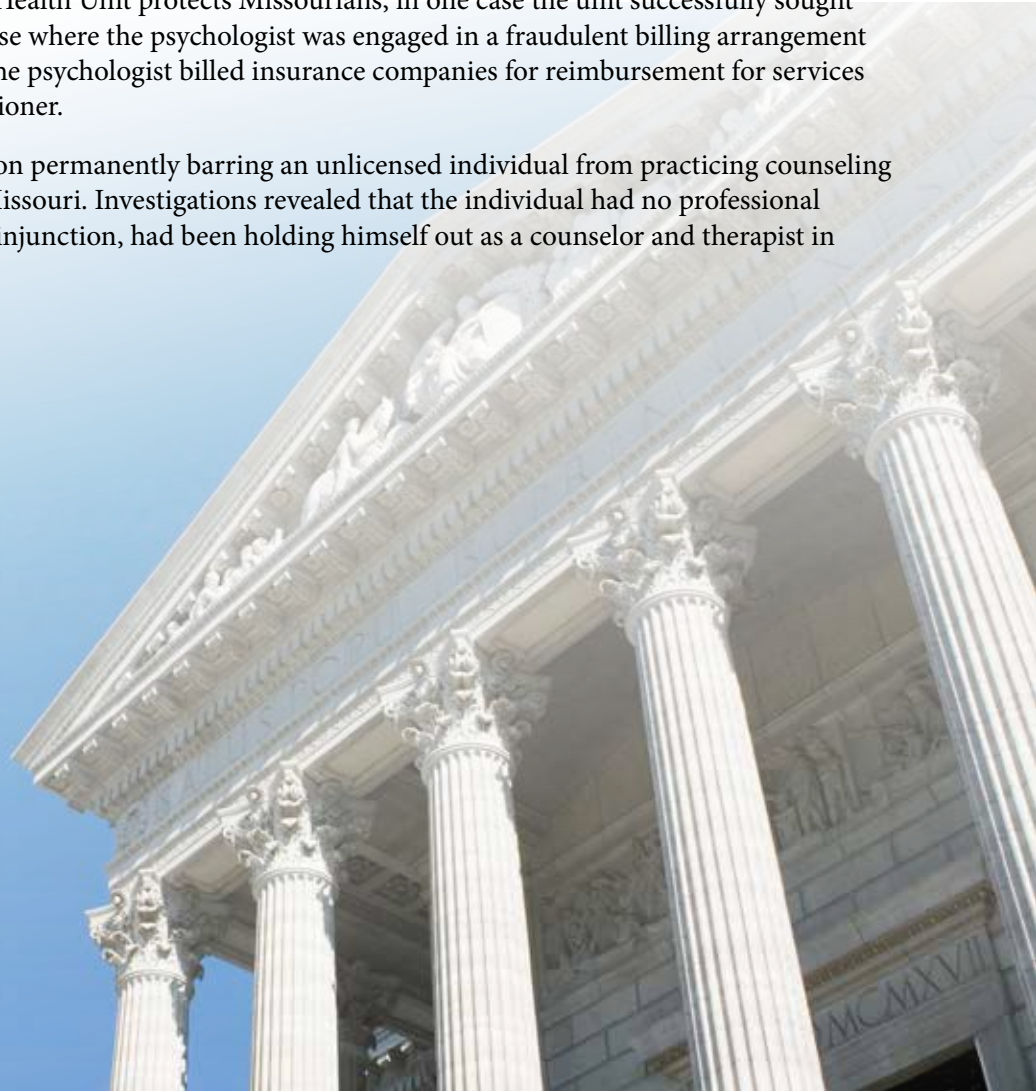
MENTAL HEALTH UNIT

The Mental Health Unit protects the health, safety, and welfare of Missourians receiving services through both the Department of Mental Health and mental health practitioners in the private sector by pursuing cases of alleged abuse and neglect, and unethical practice. The unit also protects the public by petitioning for placement of Department of Mental Health forensic patients that ensures the appropriate level of security and oversight. Additionally, the unit serves Missourians by obtaining guardians for individuals receiving Department of Mental Health services, and by participating in juvenile proceedings.

In 2013, the Mental Health Unit prosecuted 25 abuse and neglect cases, and litigated approximately 50 guardianship cases and 21 Medicaid eligibility and waiver cases. The Mental Health Unit litigated 16 cases on judicial review in circuit courts around the state, disposed of two cases in appellate court and one in the Missouri Supreme Court, and obtained a permanent injunction against an unlicensed mental health practitioner.

As an example of how the Mental Health Unit protects Missourians, in one case the unit successfully sought revocation of a psychologist's license where the psychologist was engaged in a fraudulent billing arrangement with an unlicensed practitioner. The psychologist billed insurance companies for reimbursement for services rendered by the unlicensed practitioner.

The unit also obtained an injunction permanently barring an unlicensed individual from practicing counseling or marital and family therapy in Missouri. Investigations revealed that the individual had no professional licenses of any kind and, until the injunction, had been holding himself out as a counselor and therapist in Missouri for more than 10 years.





Labor Division

The Labor Division provides general counsel and litigation services for the Missouri State Treasurer in his capacity as custodian of the Second Injury Fund and for the Department of Labor and Industrial Relations in its role administering the Fund. The division similarly provides general counsel and litigation services for the state's Office of Administration, Central Accident Reporting Office (CARO), in defending workers' compensation claims filed against a multitude of state agencies by their employees. The division also represents the state of Missouri in crime victims' compensation claims.

The Labor Division attorneys and staff worked on a month-to-month employment basis since May 2011 through June 2013, when Governor Nixon signed Senate Bill 1 (2013). This bill significantly curtails Second Injury Fund liability effective January 1, 2014, and allows for a supplemental surcharge that potentially could double the amount of money flowing into the Fund each quarter to eliminate, over the course of the next several years, the current backlog of more than 2,000 unpaid awards against the Fund. As a result of the anticipated changes from the new law, the division resumed entering settlements on behalf of the Fund in October 2013 after a four-year moratorium on all settlements.

In 2013, the Labor Division processed 7,929 new claims that were filed against the Second Injury Fund and 853 new claims filed against CARO, or 8,782 total new claims. The Division closed 6,507 Fund claims and 126 CARO claims in 2013.

TOP CASES AND ISSUES

Unpaid Second Injury Fund awards: *Raymond Skirvin v. Treasurer*, SC93032 (argued May 1, 2013)

Skirvin concerns the propriety of the circuit court's issuing writs of mandamus requiring the payment of unpaid awards against the Second Injury Fund in

light of the Fund's insolvency. The Missouri Court of Appeals, Western District issued a 50-page decision on January 22, 2013 (WD75541), holding that the trial court erred in granting a writ of mandamus compelling payment of an individual claimant's unpaid award, and transferring the case to the Supreme Court pursuant to Rule 82.03 because of the issue's general interest and importance. The Supreme Court heard oral arguments on May 1, 2013, but has not issued its decision to date.

Senate Bill 1 (2013), which took effect January 1, 2014, establishes for the first time a statutory priority for payments from the Fund based on the categories of benefits awarded. More than 2,000 awards currently await payment.

***Schoemehl* litigation**

In *Schoemehl v. Treasurer*, 217 S.W.3d 900 (Mo. Jan. 9, 2007), the Supreme Court of Missouri held that an injured worker's surviving dependents are entitled to ongoing permanent total disability benefits awarded to the worker against an employer or the Second Injury Fund, even after the worker dies from causes unrelated to that injury. The General Assembly abrogated *Schoemehl* with amendments effective June 26, 2008, providing that, aside from benefits already accrued at the time of the worker's death, no other compensation for the injury shall be paid to the worker's surviving dependents after the worker's death. However, litigation concerning the scope of *Schoemehl* continues, and the division continues efforts toward circumscribing the detrimental fiscal impact of *Schoemehl* benefits on the Fund and CARO.

In 2012, the Supreme Court held in *Gervich v. Condaire, Inc.*, 370 S.W.3d 617 (Mo. Jul. 31, 2012), that the June 23, 2008, legislative amendments abrogating *Schoemehl* were substantive and do not apply retroactively. In other words, it held that *Schoemehl* benefits apply to all pending cases in which the injury occurred prior to the effective



date of the 2008 amendments. The Court did not specifically address whether or when a surviving spouse's or other dependent's benefits terminate, but it stated in a footnote that the statutory definition of "dependent" in § 287.240.4 RSMo 2000 terminates benefits when a spouse remarries or dies.

After *Gervich*, the appellate court held in *White v. University of Missouri*, 375 S.W.3d 908 (Mo. Ct. App. W. D. Sept. 4, 2012), that although an administrative law judge or the Labor and Industrial Relations Commission was within its authority to make a factual determination that a worker's surviving spouse was the worker's dependent on the date of the worker's injury, the question of the spouse's right to survivor benefits is not ripe for determination when the spouse is still alive. Furthermore, when the injured worker dies, the surviving spouse will have to establish that they remained married until the worker's death, that the worker predeceased the spouse, and that the spouse remains unmarried in order to qualify for initial and ongoing *Schoemehl* benefits. Under the Western District's interpretation of *Schoemehl* benefits, the dependent's right to those benefits is fixed only on a contingent basis as of the date of the worker's injury.

In addition to surviving spouses, other dependents can receive an award for *Schoemehl* benefits, including children of an injured worker who receives an award for permanent total benefits and dies of causes unrelated to the work injury. In 2012, the division filed an appeal in *Spradling v. Treasurer*, Case No. SD31907 (Mo. Ct. App. S.D.), seeking guidance as to the scope of surviving children's *Schoemehl* benefits and what evidence is required to establish their dependency to qualify for those benefits initially and on an ongoing basis.

In *Spradling*, the division contended that the injured, deceased worker's oldest child introduced insufficient evidence to establish her actual dependence, was too old to qualify for the statutory presumption of dependence in § 287.240.4 RSMo and therefore was not entitled to *Schoemehl* benefits. The division argued that the benefits for the deceased worker's younger two children should

terminate when they reach 18 years old unless they establish at that time the existence of the statutory circumstances to extend their benefits, for example, that they are physically or mentally incapable of earning wages, or that they are a qualifying college student per § 287.240.4(b) RSMo. The appellate court rejected these arguments, holding that the children's status as dependents was determined and fixed as of the date of the claimant's qualifying work injury. The Supreme Court granted our application for transfer but then re-transferred to the appellate court after oral argument without opinion, leaving intact the conflict between *Spradling* and *White*. See *Spradling v. Treasurer*, SC93407 (docket entry dated Oct. 24, 2013); *Spradling v. Treasurer*, SD31907, 2013 WL 5913946 (Nov. 5, 2013) (opinion re-issued following re-transfer).

Although the issue as to the duration of *Schoemehl* spouse and child benefits remains unresolved, the division has begun challenging *Schoemehl* directly, arguing that it should be overturned. The division currently has two appeals at the briefing stage in the Southern District that raise this issue: *Shelton v. Treasurer*, SD33033; and *Lacy v. Treasurer*, SD32975. The division also has applied to the Supreme Court for transfer prior to an appellate opinion in another case with this issue that is in the briefing stage in the Eastern District: *Shelton v. Department of Corrections*, ED100812.

Threshold litigation

Section 287.220.1 RSMo requires that a claimant have a pre-existing disability of at least 15 percent to a major extremity or 12.5 percent (i.e. 50 weeks) to the body as a whole and a current compensable injury of at least 15 percent to a majority extremity or 12.5 percent (i.e. 50 weeks) to the body as a whole in order to be considered for Second Injury Fund liability. Since these thresholds went into effect in 1993, they have been interpreted to mean that each individual disability – each pre-existing disability and each current disability – must meet the applicable threshold for that body part to qualify for Fund liability.



In December 2011, the Labor and Industrial Relations Commission suddenly altered course and ruled that the statute requires consideration of the sum of all the previous disabilities for threshold purposes (i.e. it allowed claimants to stack, or combine, their disabilities to meet the thresholds). In November 2013, the Supreme Court reversed the Commission in part, concluding that in order to qualify for Second Injury Fund liability, a claimant must have at least one pre-existing disability that meets or exceeds the applicable threshold for that body part. In other words, the Court held that claimants could not stack their pre-existing disabilities to meet the thresholds nor could they combine disabilities to the body as a whole and to a major extremity to meet either threshold, which was consistent with prior appellate threshold opinions. However, changing the law in two respects, the Court further held that once a claimant has one pre-existing disability that meets or exceeds the applicable threshold, the Fund is liable for all the claimant's pre-existing disabilities without regard to any threshold, and that the thresholds do not apply to the current disability for purposes of Fund liability. *Buhlinger v. Treasurer*, SC92867 (Nov. 12, 2013); *Dyson v. Treasurer*, SC92850 (Nov. 12, 2013); *Salviccio v. Treasurer*, SC92842 (Nov. 12, 2013); *Witte v. Treasurer*, SC92834 (Nov. 12, 2013).

Monetary Savings

In 2013, 4,835 claims were dismissed against the Second Injury Fund and 126 were dismissed against CARO for a total of 4,961 dismissals obtained. The 2013 calendar year savings by the Labor Division is calculated by multiplying the claims dismissed each month by the average disposition cost per claim for those months.

Using that formula, the total savings by the Labor Division for the calendar year 2013 is \$8,476,693.24.





Litigation Division

The Attorney General's Litigation Division defends the state and its elected officials, departments, agencies, and employees against hundreds of lawsuits each year. Division attorneys handle some of the most complex legal issues facing the state, including defending constitutional challenges to state laws; advancing the state's interest in complex civil cases; defending suits brought against the Missouri Highway Patrol and its troopers; defending the state in employment, tort and commercial litigation cases; defending the Department of Corrections in inmate litigation; and defending the Boards of Police Commissioners and the police officers of the City of St. Louis and Kansas City.

In 2013, the Litigation Division closed 303 cases, including 70 lawsuits filed by inmates against the Department of Corrections and its employees. The work of the attorneys in the Litigation Division saved the state of Missouri approximately \$47,614,351.

NOTABLE CASES

Southern Wine and Spirits of America vs. Div. of Alcohol and Tobacco Control

Southern Wine filed suit challenging a Missouri statute requiring Missouri residency to obtain a liquor wholesaler license, seeking a declaration that Missouri's residency requirement was unconstitutional. Southern Wine argued that the residency requirement discriminated against out-of-state corporations in violation of the Commerce Clause and the Equal Protection Clause of the Fourteenth Amendment. Litigation Division attorneys, on behalf of the Division of Alcohol and Tobacco Control (ATC), argued that the residency requirement is authorized by § 2 of the Twenty-first Amendment, and that the requirement does

not violate the Equal Protection Clause because, among other reasons, it is rationally related to the state's interest in ensuring that liquor wholesalers are publicly accountable. The Federal District Court agreed with the state's assertion and denied the relief sought by Southern Wine, entering summary judgment on behalf of state. Southern Wine appealed that decision to the United States Court of Appeals for the 8th Circuit. The 8th Circuit upheld the ruling of the District Court, finding that the Division of ATC had established a sufficient basis for the residency requirement, and finding that the requirement does not deprive Southern Wine of equal protection of the law under the 14th Amendment.

Glossip v. Mo. Department of Transportation & Highway Patrol Employees Retirement System

The same-sex partner of a state trooper who died in the line of duty challenged the constitutionality of two statutes that create survivor benefits for troopers' opposite-sex spouses and eligible children. The Missouri Supreme Court held that the plaintiff lacked standing to challenge the ban on benefits for same-sex couples, and that conditioning benefit eligibility on marital status does not violate equal protection. The Missouri Supreme Court noted that the United States Supreme Court has not decided what level of scrutiny to apply to classifications based on sexual orientation, and expressed reluctance to expand the list of suspect classes or fundamental rights until the U. S. Supreme Court has done so.

Samuels v. Mo. Department of Correction, et al

Plaintiff Lisa Samuels sued the Department of Corrections, the warden of Crossroads Correctional Center in Cameron, several of her supervisors at Crossroads, and a female co-worker for sexual harassment, constructive discharge and retaliation. Samuels alleged that the defendants knew of her co-worker's proclivity making inappropriate sexual



comments and references, and that the co-worker's conduct caused her to suffer emotional distress, ultimately resulting in her quitting her job. The defendants denied all of the allegations, including whether the plaintiff suffered from any trauma as a result of job-related stressors. The matter was tried to a Clinton County jury in Plattsburg. Following a weeklong trial, the jury returned a unanimous verdict in favor of all defendants on all counts.

Angela Davis vs. Robert Vivona

Ms. Davis filed a wrongful death lawsuit in Jackson County, seeking damages for the death of her son, against Kansas City Police Officer Robert Vivona. Officer Vivona had pursued Ms. Davis' son in a high-speed chase, and then on foot after the suspect had abandon his car. Officer Vivona testified that he shot the decedent in self-defense, after the decedent stopped, turned toward Officer Vivona and pointed a weapon at him. Shortly before trial, two eye witnesses changed their prior statements, and testified they saw Officer Vivona shoot the decedent in the back. Expert medical testimony refuted that claim, saying the most likely path of the fatal bullet was front to back. Following a weeklong trial, the jury returned a verdict in favor of Officer Vivona.

Herman v. Mo. Public Defender System, Cat Kelly and Mary Fox

Plaintiff Cynthia Herman was a public defender, working in the St. Louis District Trial Office of the Missouri Public Defender System. Following the termination of her employment, she filed suit in the Circuit Court for St. Louis City, alleging age discrimination and retaliation against the Public Defender System, Cat Kelly (Statewide Director) and Mary Fox (St. Louis District Director). The defendants denied the allegations, and insisted Ms. Herman's employment had been terminated due to performance issues. Following a weeklong jury trial in St. Louis City, the jury returned a unanimous verdict in favor of all defendants.

Prosser v. Nagaldinne

Prosser, an inmate in the Department of Corrections facility in Farmington, filed suit in Federal Court, alleging several defendants, including the director of the Department of Corrections, the warden at plaintiffs' facility, and others, were deliberately indifferent to his medical condition, which he alleged caused him to suffer a chronic condition of foot drop. The plaintiff's legal theory was based on his allegations that he repeatedly complained to the outside contractor for medical services for the Department of Corrections, Corizon Medical Services, but that Corizon personnel had ignored his long-running complaints. A somewhat similar legal theory had been successful against another corrections facility outside of Missouri. Here, the Federal District Court judge granted summary judgment to the state defendants, finding that the plaintiff failed in his burden to prove the corrections defendants were deliberately indifferent to his condition.

Kottman v. Missouri State Fair, et al

Plaintiff filed suit in Pettis County against the Missouri State Fair and a shuttle tram driver for the Fair, who transported people from the parking area to the exhibitors' booths on the fairgrounds. She claimed she was injured when the shuttle tram on which she was riding lurched and suddenly stopped, throwing her from the tram to the ground and causing extensive hip and knee injuries. The defendants denied the shuttle driver was negligent, and argued the plaintiff was at fault for her injuries due to her attempt to step off the tram before it had come to a complete stop. The matter went to jury trial in Sedalia in July of 2013. After four days of trial, and after plaintiff rested her case, the Court entered a direct verdict for the defendants. The Court found that plaintiff's evidence had failed to make a submissible case, in that there was no evidence proving or tending to prove that the actions of the shuttle driver were a direct and proximate cause of her injuries.



Joe Frazier v. Kansas City Board of Police Commissioners, et al

Officers from the Kansas City Police Department were engaged in a high-speed pursuit of suspects of drug-dealing activity, when the suspects' car rammed into plaintiff Frazier's car, causing severe personal injuries to Mr. Frazier. The parties disputed whether the Officer's car had properly activated the patrol cars lights and sirens. Following a week-long trial, the jury returned unanimous verdicts for the officers and the Board.





Public Safety Division

Public Safety Division attorneys are appointed by courts to assist local prosecutors in serious or complex trials and grand jury proceedings and are appointed to act as special prosecutors when local prosecutors have a conflict of interest. Additionally, they:

- Prosecute workers' compensation fraud and noncompliance cases
- Assist with the training of law enforcement officers and state troopers
- Prosecute abuse and neglect of nursing home residents and Medicaid fraud cases
- Seek the civil commitment of sexually violent predators
- Represent the state in habeas appeals filed by convicted prisoners seeking release

SPECIAL PROSECUTIONS UNIT

At the end of 2013, the Public Safety Division had 340 active special prosecutions pending in 90 different Missouri counties. Attorneys in the special prosecutions unit assist local prosecutors in serious or complex trials when directed by the Governor pursuant to Section 27.030, RSMo, or when they are appointed as special prosecutors by a court due to a conflict of interest. The unit's legal work saved counties approximately \$2.5 million in 2013. During 2013, the unit received 150 new criminal cases to investigate and prosecute from 58 different counties and the City of St. Louis.

The unit's attorneys worked on more than 60 homicide cases, as well as other serious felonies, including: child molestation, sexual abuse, rape, driving while intoxicated, kidnapping, arson, domestic assault, identity theft, financial exploitation of the elderly, burglary, and public corruption. Some examples of the cases handled by the unit are:

Homicides:

State v. Jesse Driskill (Laclede Co.)

Defendant was convicted of two counts of murder in the first degree and was sentenced to death for killing 82-year-old Johnnie Wilson and 76-year-old Coleen Wilson at their home. The defendant forced the victims into their home at gunpoint, shot and suffocated Mr. Wilson, then forcibly raped and shot to death Mrs. Wilson. Evidence suggested that Driskill attempted to burn their bodies in an effort to conceal evidence of his crimes.

State v. Robert Blurton (Benton Co.)

Defendant was convicted of three counts of murder in the first degree and was sentenced to death for killing his aunt, uncle and 15-year-old cousin in their Cole Camp home. The defendant bound and shot his aunt, uncle and cousin, then fled with money and other valuables.

State v. Randall Evans (Gentry Co., venue changed to Worth Co.)

Defendant was convicted of murder in the first degree and was sentenced to life in prison without the possibility of parole for the murder of Daniel Wolf. Defendant shot his friend, Daniel Wolf, in the forehead and left him on the kitchen floor to die. The body has never been recovered. The crime occurred in Gentry County and was tried in Worth County. A meth lab was found on Evans' property, but the prosecutor did not charge for the lab.

State v. Tawanda Kunonga (Jackson Co.)

Defendant was convicted of murder in the first degree and armed criminal action, and was sentenced to consecutive life sentences for the killing of Latoya Hopkins. The defendant murdered his ex-girlfriend, Latoya Hopkins, in her home in June of 2010, by stabbing her and beating her with a meat tenderizer. The defendant left his fingerprint and palm print in the victim's blood, and his DNA was found at the crime scene.



State v. Tony King (Harrison Co., venue changed to Buchanan Co.)

Defendant was convicted of murder in the first degree, second degree arson and abuse of a child. Defendant was sentenced to life in prison, without the possibility of parole, for murder, and to two fifteen-year sentences, to run consecutively, for arson and child abuse.

State v. Brent Schwertz (Phelps Co., venue changed to Pulaski Co.)

Defendant was convicted of murder in the first degree and was sentenced to life in prison without the possibility of parole for shooting his fiancée. Defendant shot and killed Tracy Weber on February 11, 2010, after she allegedly told defendant she was ending their relationship. When officers arrived on the scene, the defendant was brandishing a silver pistol and admitted to shooting the victim in the chest. At trial, Defendant claimed the gun accidentally discharged when the victim tried to grab it from him.

State v. Melissa Youngblood (Ripley Co., venue changed to Shannon Co.)

Defendant was convicted of two counts of murder in the first degree and was sentenced to life in prison for shooting Edgar Atkinson and Bonnie Chase. Defendant shot the victims to death and then set their homes ablaze, trying to cover up the crimes. Defendant's daughter, Chantele Youngblood, and Keith Boyles, were also charged. Defendant's husband, David, was charged with the murders of Edgar Atkinson and Bonnie Chase, and also for the murders of Lloyd Piatt and Irene Piatt.

State v. Theopolis Johnson (Carroll Co.)

Defendant pleaded guilty to two counts of murder in the first degree and two counts of first degree statutory rape. Defendant was sentenced to life in prison without the possibility of parole. Defendant had sexual intercourse with a 12 year-old victim and impregnated her. Defendant, upset because victim became pregnant, killed her. Victim was 22 weeks into the term of her pregnancy at the time of her death. Defendant denied intercourse with the victim and denied paternity, however, paternity testing confirmed Defendant was the father of the child.

State v. Joshua Maylee (Callaway Co., venue changed to Boone Co.)

Defendant pleaded guilty to three counts of murder in the first degree and was sentenced to life in prison without the possibility of parole for the shooting deaths of Eugene and Jackie Pinet at their home, and for shooting Jeffrey Werdehausen at his home, all in Callaway County. Mr. Werdehausen's wife was also shot, but she survived and was able to identify the defendant. The defendant was an acquaintance of the victims. After the murder, the defendant was at large for over 24 hours.

Assaults:

State v. Sean Williams (Randolph Co.)

Defendant was convicted of kidnapping, forcible rape, forcible sodomy, and assault in the first degree. Defendant was sentenced to ninety years in the Department of Corrections. Defendant received a call from a friend who was upset with his girlfriend and invited Defendant to the motel where they were staying, asking Defendant to get there before he "kills" her. Defendant arrived, held a knife to the victim's neck, and made her get into the getaway car. Defendant and another individual traveled to a remote area, removed the victim from the car, struck her in the face and placed her in a deep freeze with cinder blocks on top. Defendant then took the victim out of the freezer, raped her and placed her back into the freezer, where she slept until morning. She managed to escape to notify authorities.

State v. Ryan Moore (Washington Co.)

Defendant was convicted of assault in the second degree and was sentenced to four years in the Department of Corrections for causing injury to a local assistant prosecuting attorney in a vehicular accident. Defendant was driving under the influence of methamphetamine.

Child Abuse and Molestation:

State v. Kenneth Shumate (Mercer Co., venue changed to Putnam Co., COV Gentry Co.)

Defendant was convicted of twelve felony counts of sexual abuse of two minor boys and was sentenced to three life sentences, plus 55 years for three counts



of statutory sodomy in the first degree, six counts of statutory sodomy in the second degree, two counts of statutory rape in the second degree, and one count of sexual exploitation of a child. Defendant had sexual intercourse with the victim, performed oral sex and made the male victim perform oral sex at his residence. Defendant also photographed the victim and Defendant's wife having sexual intercourse.

State v. Jason Birdno (Monroe Co.)

Defendant was convicted of five counts of statutory sodomy in the first degree and was sentenced to life in prison, plus 100 years. Defendant forced the victim to perform oral sex on him approximately 2-3 times per week during the 2006-2011.

State v. Albert Kessinger (Howell Co.)

Defendant pleaded guilty to statutory rape and two counts of statutory sodomy and was sentenced to thirty years in the Department of Corrections. Defendant was charged with multiple sex crimes against an 8 year-old female. In a forensic interview, the victim disclosed multiple instances of vaginal, anal and oral sexual contact with Defendant over an unspecified time period. In at least one of these instances, Defendant threatened to spank the victim with a large wooden paddle if she did not stop struggling. A SAFE Exam was performed and showed physical findings of abuse. In addition, Defendant made a partial confession to Children's Division employees (later recanted), in which he admitted to forcing the victim to perform oral sex on him on multiple occasions. Defendant was a prior sex offender, having pleaded guilty to child molestation in 2003 for similar conduct in Indiana from 2001 to 2002.

State v. Joanie Fowler (Pemiscot Co., venue changed to Scott Co.)

Defendant was convicted of endangering the welfare of a child in the first degree and was sentenced to seven years in the Department of Corrections. On the morning of September 30, 2009, Defendant's boyfriend, Mathew Dillon Taylor, told Defendant he hit the victim in the head. Defendant observed the victim limp, unconscious and fighting for breath, and saw bruises on the side of the victim's face.

However, Defendant did not call for medical help for at least 30 minutes after learning of the injury. When Defendant finally called 911, he lied about the cause of the victim's injuries, claiming the victim had been involved in a four wheeler wreck earlier that morning. The victim died of her injuries a few days later. Medical testimony established that if medical help had been sought for the victim even 30 minutes earlier, the victim may have survived.

Public Corruption Crimes:

State v. James Clampitt (Audrain Co., venue changed to Chariton Co.)

Defendant, a local attorney, was convicted of involuntary manslaughter in the second degree and leaving the scene of an accident. Defendant was sentenced to two years in the Department of Corrections for driving while intoxicated and hitting the victim, who was driving a riding lawnmower on a street. Defendant fled the scene of the accident and was caught getting his damaged vehicle repaired the next morning.

State v. Joseph Day (Audrain Co., venue changed to Warren Co.)

Defendant, a former police officer, pleaded guilty to sexual misconduct in the first degree and was sentenced to one year in jail, suspended execution of sentence, placed on supervised probation for two years, and was required to complete Sex Offender Community Treatment. Day was a 23 year-old Mexico Police Officer at the time he engaged in sexual activity with a 16-year-old female; he is now a registered sex offender.

State v. J.D. Hall (Newton Co.)

Defendant, a former Missouri State Highway Patrol trooper and bailiff, pleaded guilty to endangering the welfare of a child in the second degree and assault in the third degree, for fondling an 11-year-old female victim through her clothing. Defendant was sentenced to one year in the county jail, suspended execution of sentence, and placed on supervised probation. Special conditions of probation included: no contact with the children and counseling/training on appropriate behavior with children.



State v. Jerry Jones (St. Louis City)

Defendant pleaded guilty to harassment and was sentenced to one year in the county jail, suspended execution of sentence, and placed on supervised probation for a period of two years, for making three threatening phone calls to the St. Louis Circuit Attorney's Office. Special conditions included: attend outpatient mental health treatment, comply with all appointments and prescriptions, avoid contacting Jennifer Joyce or St. Louis Circuit Attorney's Office, and avoid misusing 911.

Methamphetamine and Drug Crimes:

In 2013, Missouri law enforcement officials busted more than 1,300 meth labs throughout the state. Meth related convictions obtained by the division included:

State v. Tommy Adams (Carter Co., venue changed to Jefferson Co.)

Defendant, the Carter County Sheriff, pleaded guilty to distribution of a controlled substance and possession of a controlled substance. Defendant was sentenced to twelve years in the Department of Corrections.

State v. Tosha Lee (Reynolds Co., venue changed to Dent Co.)

Defendant pleaded guilty to attempting to manufacture a controlled substance (meth) for purchasing ingredients and providing them to a person intending to manufacture meth. Defendant was sentenced to five years, suspended execution of sentence, and placed on supervised probation for a period of five years. Defendant pleaded guilty in order to provide testimony for the state against co-defendants charged with murder for the fire-related deaths of two infants in a meth-lab fire.

State v. Steffanie Kearbey (Carter Co.)

Defendant, a former Carter County Sheriff's deputy, was convicted of receiving stolen property of firearms, stolen from the Carter County Sheriff's evidence locker. She received a sentence concurrent with her five-year federal sentence for possession of stolen firearms.





WORKERS' COMPENSATION FRAUD AND NONCOMPLIANCE UNIT

The Workers' Compensation Fraud and Noncompliance Unit prosecutes fraud and misconduct involving workers' compensation insurance. This Unit takes seriously its obligations to the state's business community to hold accountable those individuals who steal from our workers' compensation system and undermine a sound business climate. Unit attorneys take action against employees attempting to fraudulently obtain workers' compensation benefits, and against employers who violate the law by not obtaining mandatory workers' compensation insurance. Additionally, the unit attempts to recover restitution for injured workers, insurance companies and the state's Second Injury Fund.

In 2013, the unit received 383 referrals from the Department of Labor for review, investigation, and prosecution.

In 2013, attorneys filed criminal charges in 20 cases, appearing in 45 counties throughout the state. For the year, more than \$582,000 was assessed against violators for fraud and insurance noncompliance, with actual monies collected from violators totaling \$524,601. In addition, attorneys collected more than \$33,159 in restitution for the state's Second Injury fund and other victims of workers' compensation fraud and noncompliance.

MEDICAID FRAUD CONTROL UNIT (MFCU)

The Medicaid Fraud Control Unit (MFCU) prosecutes fraud of the Medicaid program (Missouri MOHealthNet) by healthcare providers, and prosecutes abuse or neglect of Medicaid recipients by caregivers. The MFCU receives referrals or tips on potential Medicaid fraud and patient abuse or neglect from citizens and state agencies. The MFCU investigates these allegations across the state, and collaborates with local, state and federal

agencies to prosecute those who steal from Medicaid or harm the vulnerable. In 2013, the MFCU recovered \$47,302,930.39 for the state and received \$46,055,724.02 in payments. MFCU investigations resulted in five state criminal convictions, and the unit assisted the United States Attorney's Office in obtaining 13 federal criminal convictions.

During 2013, attorneys for the MFCU obtained judgments or settlements for the state of Missouri in eleven civil cases and settled three criminal cases. Three notable cases are highlighted and summarized below:

Ozark Family Dentistry – The MFCU negotiated a \$208,000 settlement with Dr. Arrash Ahmadnia. This settlement resolved allegations that Ahmadnia was billing Medicaid for dental fillings, but actually only providing preventative resin restorations, a procedure not covered by Medicaid. A former employee of Ahmadnia's contacted the AGO to report this allegedly fraudulent conduct and received a whistleblower recovery of \$8,239 as a result.

Home Care, Inc. – The MFCU announced a settlement with Infiniti Home Care, Inc. after alleging that Infiniti billed Medicaid for providing home care services that it did not provide. The settlement included payment of restitution, damages, penalties, and investigative costs, for a total recovery of \$174,504.

Angel's Care – The MFCU settled with a personal care services provider after alleging the provider billed Medicaid for services that were not provided. Angel's Care, Inc., d/b/a Angel's Care Home Health Services, agreed to pay damages of \$77,943.18, penalties of \$25,000, and more than \$7,000 for the cost of the state's investigation.

As Medicaid fraud knows no borders, several civil settlements also resulted from national efforts undertaken by the states, through the National Association of Medicaid Fraud Control Units (NAMFCU).



SEXUALLY VIOLENT PREDATOR UNIT

The Sexually Violent Predator (SVP) Unit seeks civil commitment of sexual predators who suffer from a mental abnormality making them more likely than not to commit additional predatory acts of sexual violence.

In 2013, attorneys in the SVP unit ensured the civil commitment of 17 sexually violent persons. Attorneys for the unit appeared in 23 different counties around the state. Thirteen of the commitments were obtained by jury trial. The predators included lifetime child molesters and sadistic rapists.

At the end of the year, attorneys in the unit had 32 active cases pending adjudication by trial, and there were a total of 208 people committed to the Department of Mental Health under the SVP law. None of these predators will be released into Missouri communities until that person's mental abnormality no longer causes them to be likely to commit sexually violent offenses. A few notable cases included:

IN RE: Booker, Ralph (Jackson Co)

In 1992, Booker was convicted of attempted rape and sodomy of a 13-year-old female. While on parole in 1995, he raped a 16- and 18-year-old pair of victims at gunpoint. Booker was terminated from treatment while incarcerated, noting his violence and lack of interest in treatment.

IN RE: Bradley, Lester (Jackson Co)

In 1998, Bradley pleaded guilty to molesting a 12-year-old female. Bradley created an instructional course to molest his victim that was to culminate in a final lesson with penetration and told the victim he would be giving her sibling the same lessons. He violated parole in 2008 by seeking out relations with a woman with a 10-year old daughter and admitted to continued fantasies about his victim.

IN RE: Doyle, William (St. Louis Co)

Doyle was convicted for molesting a 6-year-old female child in 1991 and completed sex offender treatment. In 2000, an 8-year-old child notified her mother that Doyle had molested her. In 2000, Doyle had repeated sexual intercourse with a 13-year-old female. In 2001, he was sent to prison. His parole was violated in 2010, where he was noted to be highly deviant with little to no insight into deviant behaviors.

IN RE: Hulsey, Leroy (St. Louis City)

In 1985, Hulsey was arrested for the rape of his 28-year-old cousin. In 1989, he was identified by another female victim as breaking into her home and attempting rape, before she fought him off. In 1993, he was arrested for the kidnapping and rape of a 21-year-old female. Although the victim stabbed him in the back with a shard of glass during the assault, Hulsey continued the rape. In 1995, Hulsey was arrested for threatening a 20-year-old female with a knife, demanding sex. In 1997, Hulsey kidnapped and raped a 28-year-old female victim. When released on parole, he was rearrested for threatening another female victim with violence.

IN RE: Peck, Fred (St. Charles Co)

In 2004, Peck stalked children at a local middle school and followed a 10 year-old boy, soliciting him for sex. He had previously been incarcerated for sodomizing a 3 year-old female child and had been detained as a juvenile for raping and urinating on an 8 year-old boy. Peck failed to complete sex offender treatment while incarcerated.

HABEAS UNIT

Attorneys in the Habeas Unit defend the state in all habeas corpus actions filed by inmates in state and federal courts. Typically, these cases involve offenders filing lawsuits challenging the basis for their conviction or the duration of their custody. During 2013, attorneys in the unit defended the state's interest in 648 new cases in state and federal courts. The number of new cases arose uniformly in federal court, the Missouri appellate courts, as well as the Missouri trial courts. Habeas attorneys



appeared and defended these actions in both districts of the federal courts in Missouri, the United States Court of Appeals for the Eighth Circuit, Missouri Court of Appeals for the Western District, the Missouri Supreme Court and in trial courts around the state.

Near the end of the year, the Habeas Unit successfully litigated multiple cases in state and federal trial and appellate courts against two offenders whose execution dates had been set by the Missouri Supreme Court. No executions had been carried out in the state since February 2011, primarily because of changes to the Department of Corrections execution protocol. The unit's work cleared the way for the lawful executions of Joseph Franklin on November 20, 2013, and Alan Nicklasson on December 11, 2013. In Franklin, attorneys for the unit appealed two last-minute stays issued by federal district courts, which the United States Court of Appeals for the 8th Circuit vacated on the day of the execution. In Nicklasson, attorneys for the unit prevailed in the United States Supreme Court three two times on the day of the execution, the last coming when the Supreme Court vacated a stay issued by the 8th Circuit Court of Appeals.

VICTIM SERVICES UNIT

The Victim Services Unit provides assistance to crime victims with compassion and respect to help them understand their options, minimize their trauma, and stabilize their lives. Our advocates serve victims of crime and their families across the state of Missouri through home visits, court accompaniment and in helping them obtain victim compensation and other support as needed. Dealing with the aftermath of a violent crime can be overwhelming, and the unit employs two full-time victim advocates to help reduce stress and make sure the rights of crime victims are honored, as well as to ensure that they have a strong voice in the criminal justice system.

In 2013, the unit served 598 victims in criminal prosecutions, making 1,822 different individual contacts. Additionally, the unit served 11 different victims associated with sexually violent predator litigation, making a total of 142 different contacts.



PROMOTING INTERNET SAFETY

Attorney General Koster has made internet safety for young people a priority over the past four years. Beginning in 2010, Attorney General Koster has provided Internet Safety presentations to students and parents across the state. These presentations are offered as a service to any interested school district.

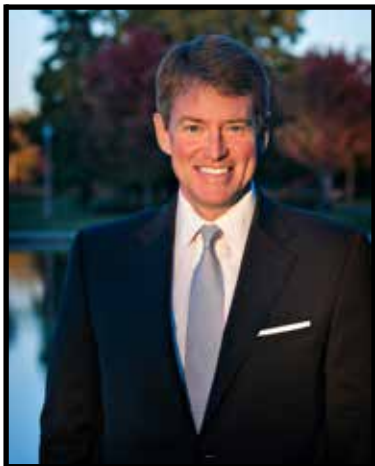
Public Education Director Tom Durkin is now meeting and speaking to the next generation of middle school and high school students; providing them with essential information that can help them use technology wisely. Attention is also directed to the creation of student-driven anti-bullying programs such as the one recently started at the Knob Knoster Middle School.

Nearly 30,000 students, teachers and parents have attended presentations offered by the Attorney General's office on the subject of Internet Safety.



"Thank you so much for taking the time out of your busy schedule to share such important information with our middle school students. What you do is vital to the safety of children. We appreciate you."

The Staff and Students of Knob Knoster Middle School



**OFFICE OF ATTORNEY GENERAL
CHRIS KOSTER**

PO Box 899

Jefferson City, MO 65102

573-751-3321

ago.mo.gov